

## **22.1203-4**

Wage and Hour Division, Branch of Government Contracts Enforcement, 200 Constitution Avenue, Room S-3006, Washington, DC 20210, or email to: *Displaced@dol.gov*.

### **22.1203-4 Method of job offer.**

A job offer made by a successor contractor must be a bona fide express offer of employment on the contract. Each bona fide express offer made to a qualified service employee on the predecessor contract must have a stated time limit of not less than 10 days for an employee response. Prior to the expiration of the 10-day period, the contractor is prohibited from offering employment on the contract to any other person, subject to the exceptions at 22.1203-5. Any question concerning an employee's qualifications shall be decided based upon the individual's education and employment history, with particular emphasis on the employee's experience on the predecessor contract, and a contractor may utilize employment screening processes only when such processes are provided for by the contracting agency, are conditions of the service contract, and are consistent with the Executive Order. An offer of employment will be presumed to be bona fide even if it is not for a position similar to the one the employee previously held, but is one for which the employee is qualified, and even if it is subject to different employment terms and conditions, including changes to pay or benefits. (See 29 CFR 9.12(b) for regulatory provisions addressing circumstances in which a bona fide offer of employment can occur.)

### **22.1203-5 Exceptions.**

(a) A successor contractor or its subcontractors are not required to offer employment to any service employee of the predecessor contractor who—

(1) Will be retained by the predecessor contractor.

(2) The successor contractor or any of its subcontractors reasonably believes, based on the particular service employee's past performance, has failed to perform suitably on the job. (See 29 CFR 9.12(c)(4) for regulatory provisions addressing circumstances in which this exception would or would not be appropriate.)

## **48 CFR Ch. 1 (10-1-14 Edition)**

(b) A successor contractor or its subcontractors may employ under the contract any of its current service employees who (1) have worked for the successor contractor or its subcontractors for at least three months immediately preceding the commencement of the successor contract, and (2) would otherwise face lay-off or discharge.

(c) The successor contractor bears the responsibility of demonstrating the appropriateness of claiming any of the preceding exceptions and the exemption listed at 22.1203-2(a)(5) involving nonfederal work.

### **22.1203-6 Reduced staffing.**

A successor contractor and its subcontractors may employ fewer service employees than the predecessor contractor employed in connection with performance of the work. Thus, the successor contractor need not offer employment on the contract to all service employees on the predecessor contract, but must offer employment only to the number of eligible service employees the successor contractor believes necessary to meet its anticipated staffing pattern. Where a successor contractor does not initially offer employment to all the predecessor contract service employees, the obligation to offer employment shall continue for 90 days after the successor contractor's first date of performance on the contract. (See 29 CFR 9.12(d) for regulatory provisions addressing circumstances in which reduced staffing can occur.)

### **22.1204 Certified service employee lists.**

(a) Not less than 30 days before completion of the contract, the predecessor contractor is required to furnish to the contracting officer a certified list of the names of all service employees working under the contract and its subcontracts at the time the list is submitted. The certified list must also contain anniversary dates of employment of each service employee under the contract and subcontracts for services. The information on this list is the same as that on the seniority list required by paragraph (n) of the clause at 52.222-41, Service Contract Labor Standards. If there are no changes to the workforce before the predecessor